

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
ACTION AGENDA SUMMARY

DEPT: Public Works

BOARD AGENDA # *C-5

Urgent Routine

AGENDA DATE April 8, 2014

CEO Concurs with Recommendation YES NO
(Information Attached)

4/5 Vote Required YES NO

SUBJECT:

Approval to Negotiate and Sign the Transit Operations Contract for the County's Public Transit System, Operating as Stanislaus Regional Transit (StaRT), to Storer Transit Systems, Incorporated

STAFF RECOMMENDATIONS:

1. Authorize the Department of Public Works to negotiate a contract with Storer Transit Systems, Inc. to operate Stanislaus Regional Transit (StaRT) services for five (5) years commencing on July 1, 2014 and terminating on June 30, 2019, with one one-year extension option.
2. Authorize the Director of Public Works to sign and execute all necessary documents.

FISCAL IMPACT:

All funds necessary to fund transit operations costs will be provided through a combination of State and Federal funds, including the Transportation Development Act funds, Section 5307 urbanized and Section 5311 non-urbanized funds. Based on the proposed operating hours, the one year cost is estimated at \$4,035,663 with the five-year cost estimated to be \$20,178,315. The contract will be funded through the Public Works Local Transit System Budget.

BOARD ACTION AS FOLLOWS:

No. 2014-161

On motion of Supervisor Withrow, Seconded by Supervisor O'Brien

and approved by the following vote,

Ayes: Supervisors: O'Brien, Chiesa, Withrow, Monteith, and Chairman De Martini

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) X Approved as recommended

2) _____ Denied

3) _____ Approved as amended

4) _____ Other:

MOTION:

ATTEST: Christine Ferraro
CHRISTINE FERRARO TALLMAN, Clerk

File No.

Approval to Negotiate and Sign the Transit Operations Contract for the County's Public Transit System, Operating as Stanislaus Regional Transit (StaRT), to Storer Transit Systems, Incorporated

DISCUSSION:

The Department of Public Works Transit Division recommends that the Stanislaus County Board of Supervisors award a five-year transit operations contract to Storer Transit Systems, Inc. This contract includes operation of the County's fixed route, deviated fixed route, shuttles, and demand response services, as well as the non-emergency medical transportation service provided to residents traveling to the Bay Area for medical appointments. Storer Transit currently operates the County's transit services and has been under contract since 1982.

The procurement process, which was a joint procurement with the cities of Ceres and Modesto, began in July 2013. A Request for Proposal (RFP) was issued in September 2013 by the City of Modesto soliciting firms to submit proposals to operate the County's public transit system, and transit operations for Modesto and Ceres. Interested firms could submit proposals to operate any one of the transit systems as a stand-alone operation, any two as a combined operation, or all three systems combined.

The procurement process was competitive and satisfied the County's Purchasing Division guidelines and met Federal and State procurement regulations under the Federal Transit Administration Circular 4220.1E. Proposals were received from Storer Transit Systems, Inc. and MV Transportation, Inc. of Dallas, Texas. The proposals were comprised of operating costs, including labor, benefits, materials and supplies and insurance, as well as capital costs for vehicles to be supplied, facilities, computers and telephones. Per guidelines outlined in the RFP, each transit agency formed its own evaluation panel to rank proposals using a scoring system provided in the RFP. Points were awarded based on responsiveness, quality and pricing.

Proposals for the County transit system were evaluated by County employees from General Services Agency, Public Works Transit and a third member selected from the City of Modesto transit system. Cost proposals submitted are based on an hourly rate per revenue service and are dependent on the types, level and quantity of services to be provided. The County's evaluation panel recommended awarding the contract to Storer Transit under Option 7 which is advantageous to all three transit systems and enables the systems to take advantage of economies of scale by awarding the contract to the same firm. Option 7 is the combined operations of the Modesto Area Dial-A-Ride (MADAR), Ceres Area Transit (CAT), Ceres Dial-A-Ride (CDAR), and Stanislaus Regional Transit (StaRT). This option provides a great opportunity to use a service contractor who is familiar with the three transit operations and ensures continued use and sharing of operations and maintenance facilities to minimize operational costs. If awarded, this option will result in an estimated cost of \$4,035,663 for the first year of the contract and an estimated cost of \$20,178,315 for the five-year period of the contract.

The cost proposal for the first year includes transit operations and capital costs of the buses similar to the current agreement. The cost of service to be provided in subsequent years will increase based on the Consumer Price Index. Based on staff's analysis, the rates in the option selected provide cost savings over rates in the current Agreement. Under the RFP rules, the County could only obtain Storer's pricing in Option 7 if the Cities of Ceres and Modesto also awarded Option 7 as recommended by their evaluation panels. Option 7 was awarded by the City

Approval to Negotiate and Sign the Transit Operations Contract for the County's Public Transit System, Operating as Stanislaus Regional Transit (StaRT), to Storer Transit Systems, Incorporated

Councils of the cities of Modesto and Ceres on February 25, 2014 and March 10, 2014 respectively.

Staff recommends approval to negotiate and sign an Agreement with Storer Transit System, Inc. to operate StaRT services for five years beginning from July 1, 2014 to June 30, 2014. The new contract will be effective from July 1, 2014 through June 30, 2019 with the option of extending it for up to three optional periods of one year duration. Approval of this request would allow Storer to expedite the procurement of transit buses needed for the new service contract in an expeditious manner and would enable them to take delivery of the buses within six months of approval. Because the manufacture of small paratransit buses can take up to six months, this ensures that the buses are delivered in a timely manner.

The Request for Proposal (RFP) is available for public review and those interested in reviewing the RFP may contact the County's Transit Manager Eunice Lovi at 209-525-7560.

POLICY ISSUES:

Approval of this action supports the Board's priorities of Efficient Delivery of Public Services by participating in a cooperative agreement to minimize cost of transit operations while maintaining adequate service levels.

STAFFING IMPACT:

There is no staffing impact associated with this request.

CONTACT PERSON:

Eunice Lovi, Public Works Transit Manager. Telephone: 209-525-7560.

EL:djd

H:\Eunice Lovi\BOS\FY 13-14\Transit Operation \Transt Operations Contract Award Approval_BOS 4.8.14

**AGREEMENT
FOR
TRANSIT CONTRACTOR SERVICES**

This Agreement for Transit Contractor Services ("Agreement") is made and entered into this 11th day of July 2014, by and between COUNTY OF STANISLAUS ("COUNTY"), and Storer Transit Systems, Incorporated, a California corporation, ("CONTRACTOR").

INTRODUCTION

WHEREAS, the COUNTY has a need for services involving the continuation of public transportation services provided by County's Stanislaus Regional Transit; and

WHEREAS, in order to meet local public transportation needs, the County wishes to provide a cost-effective and efficient Transit Services for the residents of Stanislaus County in the COUNTY's service area; and

WHEREAS, COUNTY recognizes that CONTRACTOR has the capability to provide such service; and

WHEREAS, the CONTRACTOR has agreed to provide those transportation services and is specially trained, experienced, and competent to perform such services;

NOW, THEREFORE, it is mutually agreed by and between the parties to this agreement that the CONTRACTOR shall provide COUNTY Transit Services for the COUNTY pursuant to the following terms and conditions: :

1. DEFINITIONS

1.1 "Transit Manager" means COUNTY Transit Manager

1.2 "FTA" means the Federal Transit Administration, U.S. Department of Transportation

1.3 "DAR" Dial-A-Ride service provided in COUNTY's service area

2. TERMS OF AGREEMENT

2.1. The term of this Agreement shall be from July 1, 2014 until June 30, 2019. This term will be in effect unless sooner terminated as provided below.



- 2.2 COUNTY may terminate this contract for convenience, subject to all rights of appeal under Paragraph 10.1, in whole or in part, without cause upon giving written notice to CONTRACTOR. COUNTY shall pay all reasonable costs associated with this contract that CONTRACTOR has incurred up to the date of termination and all reasonable costs associated with termination of the contract. CONTRACTOR, however, may not be reimbursed for any anticipatory profits that have not been earned up to the date of termination.
- 2.3 COUNTY's Remedies on Beach: It is understood and agreed that in the event of failure by CONTRACTOR to perform services required by this Agreement, in addition to all other remedies, penalties and damages provided by this Agreement and Federal, State, and County laws, COUNTY may provide such services, and deduct the cost of doing so from the amounts due or to become due to the CONTRACTOR. The costs to be deducted shall be the actual costs to COUNTY to provide such services or the costs shown on the Service and Payment Schedule, whichever is greater.
- 2.4. Should COUNTY fail to pay CONTRACTOR all or any part of the compensation set forth in this Agreement, on the date due, CONTRACTOR, at the CONTRACTOR's option, may terminate this Agreement if the failure is not remedied by the COUNTY within ninety (90) days from the date payment is due.
- 2.5. This Agreement may be terminated immediately by COUNTY in the event of a material breach by CONTRACTOR, subject to all rights of appeal under Paragraph 10.1. A "material breach" for this purpose shall include, but not limited to, the following items:
 - 2.5.1. Failure by CONTRACTOR to operate a safe service (e.g., having an accident record significantly higher than industry norms, evidence of continued disregard for proper bus operating procedures, etc.). CONTRACTOR's safety record shall be reviewed bi-annually.
 - 2.5.2. Failure by CONTRACTOR to make the corrections specified by the COUNTY Transit Manager in Notices of Deficiency, within the times specified on at least three (3) occasions within any twelve (12) month period.
- 2.6. This Agreement shall automatically terminate on the occurrence of any of the following events:
 - 2.6.1. Bankruptcy or insolvency of either party;
 - 2.6.2. Sale of CONTRACTOR's business; or
 - 2.6.3. If, for any reason, CONTRACTOR ceases to be licensed or otherwise authorized to do business within the State of California, or determined not to be a corporation in good standing by the California Secretary of State, COUNTY shall send a written letter requiring CONTRACTOR to remedy

such defect or defects within thirty (30) days of receipt of notice of such defect or defects.

2.7 If this Agreement is terminated for any reason, the final payment due to CONTRACTOR will be made after the determination of any incentives and/or penalties. Final payment will be made no later than ninety (90) days from the date of the final invoice from CONTRACTOR

2.8. COUNTY, at its sole discretion, may terminate this Agreement at any time, without prejudice, if State or Federal funding is eliminated or reduced and COUNTY's Board of Supervisors orders a substantial decrease in the level of service as described in Paragraph 4.2 of this Agreement. Such termination shall be immediately effective on the date set forth in such an order adopted by the Board of Supervisors.

2.9. This Agreement may be terminated at any time upon mutual written agreement between both parties.

2.10. OPTIONAL CONTRACT EXTENSION TERMS:

COUNTY, at its sole discretion, may extend this Agreement by delivery of a written notice for up to three (3) optional periods each of one (1) year duration. Cost per revenue hour and fixed costs shall be arrived at upon the basis of negotiations and mutual agreement, but shall be limited so that the maximum percent annual increase in the Agreement budget for each option period, after adjustment for any changes in the level of vehicle revenue hours to be provided, shall be no more than up to five (5) percent of the annual increase in the Consumer Price Index (CPI) for the State of California for the most recently concluded calendar year. CPI for each year will determine the percent increase in the operating cost per hour after the first year of the Agreement and may be less than the five (5) percent noted in this section.

2.11. Upon receipt of Notice to Proceed from COUNTY, CONTRACTOR shall provide required services and shall commence performance under this Agreement in a timely manner consistent with the requirements and standards established by applicable Federal, State, and local laws, ordinances, regulations, and resolutions.

2.12. COUNTY shall designate COUNTY Transit Manager to work directly with CONTRACTOR in the performance of this Agreement and may issue all approvals, directives, consents and agreements on behalf of the County. CONTRACTOR shall designate a representative for purposes of this Agreement who is authorized to issue all approvals, directives and agreements on behalf of CONTRACTOR called for by this Agreement, except otherwise expressly provided in the Agreement.

3. Scope of Work



CONTRACTOR shall provide public transportation services Monday through Saturday of each week, which shall include the operation, maintenance and management of COUNTY's transit system also known as Stanislaus Regional Transit (StaRT). StaRT services comprise of fixed route, deviated fixed route, shuttle, demand response, and non-emergency transportation service in its service area.

CONTRACTOR shall provide vehicles, drivers, dispatchers, maintenance, fuel, back-up vehicles, a two-way radio communications system, cell phones, and an Operations Manager for the system. Actual system operations, CONTRACTOR requirements, service area boundaries, service hours, fare structures, and rider eligibility are fully described below.

3.1. Service Description:

3.1.1. Demand Response Service:

Demand response service for purposes of this Agreement shall include shuttle or intercity, dial-a-ride or intracity, and non-emergency medical transportation services provided in the COUNTY. Service to be provided will be to pick up and deliver passengers within the COUNTY's service area on a rider-sharing basis and from curb to curb as defined by the National Transit Database (NTD) for demand response service.

3.1.1.1. For deviated fixed route service, revenue hours shall begin from arrival at the first pick up to the last drop off.

3.1.1.2. For shuttle or intercity demand response service, revenue hours shall begin from first pick up to last drop off.

3.1.1.3. For Dial-a-Ride or intracity demand response service, revenue hours will only be billed when a vehicle is in the DAR service boundary.

Passengers within COUNTY's service area shall be required to provide CONTRACTOR with a minimum of two hours (120 minutes) advance notification of desired pick up time and service request. CONTRACTOR shall establish and inform passengers of their pick up time when riders request service.

CONTRACTOR shall be required to make every effort to pick up passengers no more than 15 minutes before or 15 minutes after each passenger's established pick up time for immediate response and 15 minutes before or after established pick up time for advance reservation. CONTRACTOR shall notify passengers by telephone, if StaRT DAR vehicles are expected to arrive more than 15 minutes later than the appointed and/or established time.

CONTRACTOR shall be expected to deliver passengers to their destinations within sixty (60) minutes of pick up. CONTRACTOR shall

be responsible for all service operations including, but not limited to: scheduling trips, assignment of vehicles, hiring, training, and supervising drivers and dispatchers; provide efficient routing in the service area; and knowledge of the Americans with Disabilities Act (ADA) and other operational requirements of persons with disabilities.

CONTRACTOR's drivers may assist passengers while boarding and deboarding vehicles as needed, as long as the driver does not lose sight of vehicles. CONTRACTOR shall park vehicles as closely to each passenger's origin and destination, including entering parking lots with enough room for the driver to turn vehicle around as necessary.

CONTRACTOR shall schedule the operation of vehicles in efficient manner to utilize more vehicles during peak hours and with fewer vehicles during non-peak periods of the day.

3.1.2. DAR Subscription Service:

Up to fifty (50) percent of the total service may be reserved for subscribers, i.e., passengers who travel two or more days to the same destination at the same time each day or week. COUNTY reserves the right to change its subscription procedures and policies. CONTRACTOR shall be required to pick up subscription riders within thirty (30) minutes on either side of the established pick up time.

3.1.3. Fixed Route Service:

Fixed route service shall operate fourteen (14) vehicles on fixed route service in the defined service boundary during peak hours as deemed by COUNTY. COUNTY fixed routes including Routes 10, 15, 40, 45-East, 45-West, 60 and 70 and will require 14 vehicles for service operation Monday through Friday and approximately six (6) or more vehicles on Saturday.

In addition, COUNTY shall require CONTRACTOR to operate thirteen (13) or more vehicles at peak times for deviated fixed route, flexible fixed route, shuttle services, or combination thereof, in a manner established by COUNTY to meet transit needs in the service area.

3.2. Hours of Operation (Span of Service)

3.2.1. Dial-A-Ride (DAR) Hours of Operation (Span of Service):

Rides can be scheduled to begin at established times published in the Ride Guide for the each dial-a-ride service, shuttle and non-emergency medical transportation services Monday to Friday. Except for Riverbank and Oakdale DAR and the non-emergency medical transportation service, all other DAR and shuttle services will be operated on Saturday at published times shown in the Ride Guide.



3.2.2. Fixed Route Service – Hours of Operation (Span of Service):

COUNTY has seven (7) fixed and one (1) deviated fixed routes with varying public schedule times and established hours of operation for each route as published in the Ride Guide. Generally, fixed route service in the COUNTY's service area begins at 4:30 AM and ends at 10:35 PM with all routes operated from Monday through Saturday except for Routes 10 and 70 which operates Monday through Friday. Headways on the routes vary with Route 10 having the most improved route frequency.

3.2.3. Service Hours Exclusion:

3.2.3.1. Vehicle Revenue Hours (VRH) will be defined for StaRT services as follows: For fixed stop services, revenue hours will begin from arrival at the first bus stop to departure from the last bus stop of the service. For deviated fixed stop service, revenue hours will begin from arrival at the first bus stop or first pick up to departure from the last stop on the service or the last drop off, or whichever time is longer.

3.2.3.2. For shuttle services, intercity demand response and dial-a-ride services, revenue hours shall only be billed from within the service boundary and shall begin from the first passenger pick up to the last passenger drop off.

Vehicle revenue hours for all StaRT services shall exclude out-of-service time for operator breaks, meals, fueling; time traveled between vehicle storage areas, deadhead time or other non-revenue generating vehicle time. A VRH shall end when a vehicle drops off its final passenger prior to returning to CONTRACTOR's vehicle storage yard.

3.3. Service Operating Cost per Hour:

COUNTY shall compensate CONTRACTOR as per provisions set forth below. Beginning July 1, 2014, the compensation rate shall be based on the estimated revenue hours published in RFP 1314-06 and will be as follows:

3.3.1. Contract rate for COUNTY owned fixed route CNG buses will be \$64.99 per Vehicle Revenue Hour (VRH). The estimated VRH for fixed route service using COUNTY owned CNG buses are estimated to be 29,060.

3.3.2. Contract rate for COUNTY owned paratransit-size CNG buses will be \$62.65 per Vehicle Revenue Hour (VRH). The estimated VRH for demand response service using COUNTY owned paratransit-size CNG buses are estimated to be 5,522.

3.3.3. Contract rate for COUNTY owned Medivan Diesel bus will be \$67.68 per Vehicle Revenue Hour (VRH). The estimated VRH for demand response



service using COUNTY owned Medivan Diesel bus is estimated to be 2,457.

3.3.4. Contract rate for the CONTRACTOR-provided paratransit-size buses will be \$73.98 per VRH. The estimated VRH for demand response service using CONTRACTOR owned paratransit-size buses fueled by the CONTRACTOR are estimated to be 22,098.

3.4. Fuel Formula, Payment and Calculation:

3.4.1. The cost of fuel will be taken into consideration by CONTRACTOR when determining their operating cost per hour. CONTRACTOR will disclose to COUNTY the set "base price" of fuel included in their hourly rate for the initial thirteen (13) months of the Agreement based on the date set in the Notice to Proceed letter to CONTRACTOR.

3.4.2. CONTRACTOR's consideration of fuel cost shall be increased or decreased beginning with payment for the fourteenth (14) months of service during the term of this Agreement, shall be adjusted dependent upon fuel cost changes. CONTRACTOR shall determine and document to COUNTY's satisfaction, the average fuel cost per gallon paid by CONTRACTOR during the first twelve (12) months of the term of this Agreement to establish a "base Price" per gallon of fuel.

3.4.3. Beginning with the fourteenth (14th) month, CONTRACTOR will determine COUNTY's average monthly fuel cost per gallon by dividing total gallons of fuel purchased during the billing period by the total cost for said fuel.

3.4.4. CONTRACTOR will then determine the total gallons used per route.

3.4.5. COUNTY's average monthly fuel cost per gallon will then be subtracted from CONTRACTOR's average base cost per gallon. The cost differential will then be multiplied by the number of gallons used on each route.

3.4.6. If the cost differential is positive, the amount will be included in and charged to the monthly billing for that route. If the total is negative, the amount will be deducted from the monthly billing for the route.

3.4.7. The base fuel cost per gallon with the COUNTY approval may be adjusted annually.

3.5. Claims & Forms: Time of Submission: No later than the 10th of the month following the month during which the services were provided, CONTRACTOR shall submit its claim for compensation to COUNTY Transit Manager. Such claims shall specify the dates of service, and designate by route and the type of day (i.e., weekday, Saturday, Sunday/Holiday) the number of vehicle revenue hours actually provided for which compensation is claimed. A summary of

vehicle service hours and miles missed by route and date shall be submitted with CONTRACTOR's claim.

COUNTY may issue forms for such claims, and CONTRACTOR will utilize and include all information required by such forms in submitting its claims. In addition, COUNTY may request, and CONTRACTOR shall make available, such books and/or records required to enable verification of a claim.

- 3.6. Claim Payments: Time & Dispute Resolution: Upon receipt of a claim, including Incentive and Penalty Assessment, COUNTY Transit Manager or his/her designee shall verify its accuracy and completeness. If the claim is accurate, and CONTRACTOR is entitled to payment thereon, the COUNTY Transit Manager shall approve the claim and forward it for payment to the appropriate COUNTY offices. Approved claims shall be due and payable on the 30th day after receipt and approval by the COUNTY Transit Manager of the complete claim and all required verification and reports.

If COUNTY Transit Manager disputes all or part of a claim, the amounts and reasons for a disputed claim shall be documented to CONTRACTOR within fourteen (14) calendar days of receipt of invoice.

Upon submittal of a corrected claim, the corrected claims shall be due and payable on the 30th day after receipt of the corrected claim and all required verification and reports. The dispute resolution procedure detailed in Section 10 of this Agreement shall be used to resolve any disputes arising under or relating to the terms of this Agreement.

- 3.7. Except expressed and provided in this Agreement CONTRACTOR shall not be entitled to nor receive from COUNTY any additional consideration, compensation, salary, wages, or other type of remuneration for services rendered under this Agreement. Specifically, CONTRACTOR shall not be entitled by virtue of this Agreement to consideration in the form of overtime, health insurance benefits, retirement benefits, disability retirement benefits, sick leave, vacation time, paid holidays, or other paid leaves of absence of any type or kind whatsoever.
- 3.8. COUNTY will not withhold any Federal or State income taxes or Social Security tax from any payments made by COUNTY to CONTRACTOR under the terms and conditions of this Agreement. Payment of all taxes and other assessments on such sums is the sole responsibility of CONTRACTOR. COUNTY has no responsibility or liability for payment of CONTRACTOR's taxes or assessments.

In and for complete consideration of all services to be provided by CONTRACTOR, COUNTY shall make payment to CONTRACTOR for vehicle revenue hours in accordance with those rates specified in CONTRACTOR's proposal and in effect at the time that the services were provided for each month and each in-service vehicle service hour provided during the billing period. Payment shall be made monthly in arrears. In the event that a modification is

made to the bus schedules during a billing period, payments shall be prorated on a daily basis.

- 3.9. CONTRACTOR's performance, at the discretion of the COUNTY Transit Manager, may be reviewed and where appropriate, incentives and penalties may be assessed with each claim. CONTRACTOR's self-certification process shall be subject to audit by COUNTY. If data for an incentive or penalty provision is not available, incomplete or not acceptable, no incentive or penalty may be invoked for that provision. It is noted, however, that a penalty may be invoked for failure by CONTRACTOR to collect data necessary for providing all services and assessment of penalties and incentives. Such incentives or penalties apply only to those periods of time when assessments are being made. Afterward, the rate paid to CONTRACTOR shall revert to original rates described in CONTRACTOR's proposal until another assessment is made.

Both parties agree the assessment of incentives or penalties relative to the Performance Incentives Program shall not lessen COUNTY's right to declare a material breach of CONTRACT, particularly if CONTRACTOR is assessed penalties for repeated failure to comply with the operating requirements and standards of this Agreement. The decision of the COUNTY Transit Manager, and/or his/her designee, is final with respect to any assessment of performance incentives or penalties.

CONTRACTOR may appeal the decision of the COUNTY Transit Manager as a claim for compensation under Paragraph 10 herein. Annually, the COUNTY Transit Manager may modify the performance incentives program, including penalties, bonuses, and areas covered, subject to CONTRACTOR written approval regarding the changes made.

4. CHANGES IN LEVEL OF SERVICE

Changes in the level of service shall not be authorized until mutually agreed upon in writing by COUNTY and CONTRACTOR, except emergency adjustments as specified in Subparagraph 3.1, below. Amendments to service and the payment schedule may be made as set forth below in Subparagraphs 4.2 through 4.5, inclusive.

- 4.1 Emergency Adjustments by CONTRACTOR. Notwithstanding the requirements of this Agreement, CONTRACTOR in consultation with COUNTY may modify the level of service provided only in the event of an emergency which requires COUNTY to approve detouring or adjusting approved routing or scheduling provided such changes do not "substantially change" the level of service, as defined in Subparagraph 4.1, provided pursuant to the Service and Payment Schedule in effect. CONTRACTOR shall notify COUNTY Transit Manager immediately when such adjustments occur.

COUNTY Transit Manager shall specify steps to be taken by CONTRACTOR to notify patrons of the change to routing and/or scheduling necessitated by such

emergency adjustments, and/or modifications to the emergency adjustments made by CONTRACTOR. Increases or decreases in compensation arising from such adjustments shall equal actual increases or decreases in the number of vehicle service hours expended by CONTRACTOR, and shall be made in the next monthly billing.

4.2 Substantial Change in Service Level Defined. Any proposed changes in the service level shall be deemed a "substantial change" if such results in:

- 4.2.1. an increase or decrease of 20% or more in the total number of vehicle revenue hours per week provided for combined fixed route services or fixed route deviated services or an increase or decrease of more than 20 vehicle service hours per week provided for a particular runabout or dial-a-ride service, as set forth at the time of such increase or decrease; or
- 4.2.2. a change in the number of buses CONTRACTOR is required to maintain or provide as a result of service changes; or
- 4.2.3. the addition or deletion of an entire route; or
- 4.2.4. the addition of VRH over and above the estimated VRH of 59,137 published in the RFP as the baseline for transit services to be provided in Fiscal Year 2014-2015.

All other changes in the level of service shall be deemed non-substantial changes.

4.3 Non-Substantial Changes in Service Level by COUNTY

COUNTY, through COUNTY Transit Manager, may order a non-substantial change in the level of service, either by way of an increase or a decrease, by providing a written order to CONTRACTOR specifying the change and the effective date. Such written change order shall include an amendment to the services and the payment schedule. CONTRACTOR agrees to comply with such written orders, provided, however, CONTRACTOR reserves the right to assert impossibility of performance as a defense to performance. COUNTY Transit Manager may elect to treat any such change as a substantial change, and use the process set forth in Subparagraph 4.4 below.

4.4 Substantial Change in Service Level by COUNTY. A substantial increase or decrease in the level of service, as defined in Subparagraph 4.2, may be ordered by COUNTY Board of Supervisors, and CONTRACTOR agrees to provide such services, provided that the parties shall agree as to cost adjustments pursuant to Subparagraph 4.5 below, or as otherwise provided. CONTRACTOR shall be given no less than seven (7) days written notice of the intent to order such substantial increase or decrease, and shall have an opportunity to be heard at the COUNTY's Board of Supervisors hearing on the proposed order. Such order shall be effective immediately upon adoption by the COUNTY's Board of Supervisors,



provided, however, CONTRACTOR reserves the right to assert impossibility of performance as a defense to performance.

- 4.5 Determining Costs After a Substantial Change in Service. After a Substantial Change in the level of service as defined in Subparagraph 4.4 above, the services and the payment schedule shall be adjusted to reflect the actual changes ordered in the vehicle service hours, using the unit costs for each then in effect. If such results in a need for a decrease or addition of equipment and/or facilities, CONTRACTOR shall notify COUNTY and within fourteen (14) days after receipt of such order shall submit a proposal for a change in compensation detailing such needs and their savings or costs. The parties shall, in good faith, negotiate an equitable adjustment of CONTRACTOR's compensation. If the parties are unable to reach an equitable adjustment, CONTRACTOR shall submit a claim for additional compensation pursuant to Paragraph 5, provided, however, CONTRACTOR reserves the right to assert impossibility of performance as a defense to performance.
- 4.6 Changes in Subsidiary Duties. COUNTY Transit Manager may request changes in CONTRACTOR's reporting requirements, training/safety programs, preventive maintenance and repair programs, inventory requirements, public information and dispatching services, testing procedures, personnel practices and/or other operating details not resulting in changes in level of service. If said changes differ from contractual requirements and if CONTRACTOR declines such requests, or such requests (if beyond contractual requirements) would result in a material increase in CONTRACTOR's costs or in the time required for performance, CONTRACTOR shall notify COUNTY and within fourteen (14) days after receipt of such order, shall submit in writing, a claim detailing such objections and/or increases.

During the term of this Agreement, COUNTY will request copies of interlining spreadsheet or reports detailing how COUNTY buses are interlined for each service change, turn-by-turn information for each fixed and/or deviated fixed route, operator daily runs, and any other operational reports deemed necessary for successful operation of COUNTY transit services as detailed in subsection 4.5 above.

The parties shall, in good faith, negotiate an equitable settlement of CONTRACTOR's claim based upon actual increases or decreases in CONTRACTOR's total costs to perform this Agreement caused by the change in question. If the parties are unable to reach an equitable adjustment, CONTRACTOR shall submit a claim for additional compensation pursuant to Paragraph 8 below, provided, however, CONTRACTOR reserves the right to assert impossibility of performance as a defense to performance.

5. STANDARDS OF PERFORMANCE



CONTRACTOR shall furnish in a timely, professional and courteous manner the services under this Agreement according to the specifications and standards set forth including, but not limited to, the following performance standards:

- 5.1 CONTRACTOR shall operate and furnish transit services in accordance with the COUNTY's service standards and the Stanislaus Council of Government's Regional Transportation Plan and shall complete trips under the published or agreed upon bus schedules.
- 5.2 CONTRACTOR shall provide sufficient number of operable, clean and road-worthy buses to operate full service on all routes in effect based on the published schedules. "Road-worthy" for this purpose means buses which conform to all safety requirements of the California Highway Patrol and other applicable regulatory and safety agencies such as the California Air Resources Board (CARB).
 - 5.2.1. CONTRACTOR shall provide thirteen (13) new demand response type buses that are a minimum of twenty-four and a half feet (24.5') or longer. These 13 buses shall have gasoline or diesel engines and shall comply with the CARB's requirements at all times during the term of this Agreement. These 13 buses shall have space for four (4) wheelchairs with drop-down in the wheelchair spaces in the buses. These 13 buses will have a minimum of 20 ambulatory passengers when the wheelchair spaces are not in use. All buses used by CONTRACTOR must comply with the Americans with Disabilities Act (ADA) of 1990.
 - 5.2.2. CONTRACTOR shall provide a minimum of three (3) newer demand response type buses to be used as back-up for COUNTY's transit services. The back-up buses will be new enough to ensure COUNTY meets CARB requirements during the term of this Agreement. These buses shall have space for four (4) wheelchairs with drop-down in the wheelchair spaces in the buses. These buses will have a minimum of 20 ambulatory passengers when the wheelchair spaces are not in use. All buses used by CONTRACTOR must comply with the Americans with Disabilities Act (ADA) of 1990.
- 5.3 CONTRACTOR shall develop and comply with a preventive maintenance, repair, and component rebuilding program. The program shall conform in all respects to the requirements of this Agreement, the California Highway Patrol and other applicable regulatory agencies. COUNTY shall review CONTRACTOR's maintenance records to evaluate compliance with this provision.
- 5.4 CONTRACTOR shall take all necessary action to maintain and keep all warranties on all COUNTY-provided equipment valid and effective. Copies of all warranties shall be provided to CONTRACTOR by COUNTY.
- 5.5 CONTRACTOR shall provide qualified personnel, mandated training, facilities, parts, inventory, supplies or equipment required in this Agreement.



- 5.6 CONTRACTOR shall provide services to the public in a courteous manner.
- 5.7 CONTRACTOR shall submit all reports required under this Agreement on time and all such reports shall be accurate and truthful. COUNTY may withhold compensation to CONTRACTOR under this Agreement until required reports are completed and submitted.
- 5.8 CONTRACTOR shall maintain any/all CONTRACTOR computer software and hardware equipment used in the operation of COUNTY services and shall incorporate all required transit service and operational statistical data in the databases. CONTRACTOR must contact COUNTY to seek approval before all maintenance work on COUNTY owned computer software and hardware are repaired. Maintenance work completed on any or all COUNTY owned computer software and hardware shall be paid by COUNTY.
- 5.9 CONTRACTOR shall provide and maintain facilities and equipment for all interior and exterior advertising in vehicles provided for COUNTY services.
- 5.10 CONTRACTOR shall use buses, equipment and inventory provided under this Agreement for only those purposes specified under this Agreement unless otherwise authorized by COUNTY.
- 5.11 CONTRACTOR shall take all reasonable and prudent steps to ensure that all fare revenue is deposited with COUNTY and shall account for such revenue in accordance with the requirements of this Agreement or upon demand by COUNTY, including reconciliation of all fare revenues with the actual number of passengers. COUNTY at its discretion may require an independent audit of CONTRACTOR's tickets sales and revenue collection processes.

6. CONSIDERATION, METHOD AND TIME PAID: ADJUSTMENTS:

- 6.1 In and for complete consideration of all services to be provided by CONTRACTOR, COUNTY shall pay the rates based on vehicle revenue hours as specified in the CONTRACTOR's proposal and in effect at the time that the services were provided for each month during the billing period. In the event that the services are modified during a billing period, the consideration shall be prorated on a daily basis. Such considerations are the sole and exclusive considerations for all services to be provided by CONTRACTOR pursuant to this Agreement, including the CONTRACTOR's costs for repair and maintenance operations which conform to the California Highway Patrol's requirements or requirements necessary to provide services specified.
- 6.2 Adjustment to Basic Consideration: The basic consideration provided for in Paragraph 2 shall be subject to adjustment one year after the date specified in the Notice to Proceed and every year thereafter ("the adjustment date") as follows:



The base for computing the adjustment is the most current available Consumer Price Index (CPI) for Pacific Cities and United States Average for All Urban Consumers (CPI-U) for All Items for twelve (12) months prior to the adjustment date, less the most current relative importance (weight) of Motor Fuel to All Items for the West Region for Size Class B/C. The formula shall be as follows:

$$\text{Rate of Adjustment to Basic Consideration} = A \times (100.00\% - B)$$

A – is the most current available U.S. City Average from the Consumer Price Index for Pacific Cities and United States Average for All Urban Consumers (CPI-U) for All Items for twelve (12) months prior to the adjustment date.

B – is the most current available relative importance (weight) of Motor Fuel to All Items for the West Region for Size Class B/C.

- 6.3. Performance Incentives Program. CONTRACTOR's performance, at the discretion of the Transit Manager, may be reviewed and, where appropriate, incentives and penalties may be assessed with each claim, based on the Performance Incentives Program.

The self-certification shall be subject to audit by COUNTY. If data for an incentive or penalty provision is not available, incomplete or not acceptable, no incentive or penalty may be invoked for that provision. However, it is noted that a penalty may be invoked for failure by the CONTRACTOR to collect data necessary for providing all services, and assessment of penalties and incentives, as required. Such incentives or penalties apply only to those periods of time when assessments are being made. Afterward, the rate paid to CONTRACTOR shall revert to the original rates described in the CONTRACTOR's proposal until another assessment is made.

Both parties agree the assessment of incentives or penalties relative to the Performance Incentives Program shall not lessen the COUNTY'S right to declare a material breach of CONTRACT, particularly if the CONTRACTOR is assessed penalties for repeated failure to comply with the operating requirements and standards of this Agreement. The decision of the Transit Manager, and/or his/her designee, is final with respect to any assessment of performance incentives or penalties. The CONTRACTOR may appeal the decision of the Transit Manager as a claim for compensation under Paragraph 10 herein.

Annually, the Transit Manager may modify the performance incentives program, including penalties, bonuses, and areas covered, subject to CONTRACTOR written approval regarding the changes made.

7. NOTICE OF DEFICIENCY



COUNTY Transit Manager, or his/her designee, may issue a Notice of Deficiency to CONTRACTOR, specifying areas of unsatisfactory performance and specifying what improvements are necessary to correct the deficiency. Such notice shall specify the provision(s) of this Agreement which address the issue.

CONTRACTOR shall correct the deficiency (ies) within a one month period or as otherwise agreed or extended by COUNTY.

8. HOLIDAYS

8.1 CONTRACTOR agrees to furnish services in accordance with schedules established by COUNTY. Non-operating days and/or holiday schedules shall coincide with those outlined in the System Description. For this Agreement, the holidays schedule is defined as and shall include:

New Year's Day
Martin Luther King Jr. Day
Memorial Day
Independence Day
Labor Day
Thanksgiving
Christmas Day

8.2 COUNTY Transit Manager shall designate the day(s) of observance of all holidays. COUNTY Transit Manager shall provide no less than ten (10) days' notice to CONTRACTOR of the day(s) designated for the holiday schedule.

8.3 CONTRACTOR shall post notices of holiday schedule in all buses used in COUNTY service at least seven service days in advance of each upcoming holiday.

9. DISPUTES AND CLAIMS FOR ADDITIONAL COMPENSATION

9.1. Except for claims related to compensation, which are resolved as set forth below, and except as otherwise provided in this Agreement, any other dispute arising under or relating to the terms of this Agreement, or related to performance hereunder, including, but not limited to, issues of whether a default occurred, the extent of any default, or whether any default which occurred justifies termination of this Agreement, which is not disposed of by agreement shall be decided by COUNTY Transit Manager who shall reduce such decision to writing and mail or otherwise furnish a copy thereof to CONTRACTOR. The decision by COUNTY Transit Manager shall be final and conclusive unless, within fourteen (14) calendar days from the date of receipt of such copy, CONTRACTOR mails or otherwise delivers a written appeal to COUNTY Director of Public Works (the "Director") who shall issue a written decision and mail or otherwise furnish a copy thereof to CONTRACTOR.

The decision of the Director shall be final and conclusive in all matters except where the decision results in actual or constructive termination of this Agreement, and in such cases, the decision of the Director shall be final and conclusive unless, within fourteen (14) calendar days from the date of receipt of a copy of such decision, CONTRACTOR mails or otherwise delivers a written appeal to COUNTY Board of Supervisors. In connection with any appeal under this clause, CONTRACTOR shall be afforded an opportunity to be heard and to offer evidence and argument in support of the appeal.

Pending final decision on any dispute hereunder, CONTRACTOR shall proceed diligently with the performance of work under this Agreement as directed by COUNTY Transit Manager unless CONTRACTOR has received notice of immediate termination. The decision of the Director or, in the case of termination of this Agreement, the Board of Supervisors on such appeal shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. Decisions on any disputes hereunder may include decisions of both fact and law; provided, however, that nothing herein shall be construed as making final any decision on a question of law in the event of any subsequent legal proceeding before a court of competent jurisdiction.

- 9.2. CONTRACTOR shall not be entitled to payment of any additional compensation for any act, or failure to act, by CONTRACTOR or COUNTY, including failure or refusal to modify this Agreement, or for the happening of any event, thing, occurrence, or other cause, unless CONTRACTOR has given COUNTY written claim notice as herein specified. It is the intention of this provision that differences between the parties arising under and by virtue of this Agreement be brought to the attention of COUNTY at the earliest possible opportunity in order that such matters are settled, if possible, or other appropriate action promptly taken. CONTRACTOR hereby agrees that it shall have no right to additional compensation for any claim that may be based on any such act, failure to act, event, thing or occurrence for which no written notice of potential claim was filed.
- 9.3. The written notice of claim shall be submitted to the COUNTY Transit Manager within fourteen (14) calendar days after the happening of the event, thing, occurrence, or other cause, giving rise to the potential claim. The notice shall set forth the reasons for which CONTRACTOR believes additional compensation will or may be due and the nature of the costs involved. Claims filed by CONTRACTOR shall be in sufficient detail to enable COUNTY to ascertain the basis and amount of said claims. If additional information or details are required by COUNTY to determine the basis and amount of said claims, CONTRACTOR shall furnish such further information or details so that the information or details are received by COUNTY no later than fourteen (14) calendar days after receipt of the written request from the COUNTY Transit Manager. If the fourteenth day falls on a Saturday, Sunday or legal holiday, then receipt of such information or details by COUNTY shall not be later than close of business of the next business

day. Failure to submit such information and details to COUNTY within the time specified will be sufficient cause for denying the claim.

CONTRACTOR shall keep full and complete records of the costs and additional time incurred for any work for which a claim for additional compensation is made. COUNTY or any designated claim investigator or auditor shall have access to those records and any other records as may be required by COUNTY to determine the facts or contentions involved in the claims. Failure to permit access to such records shall be sufficient cause for denying the claims.

- 9.4. The written notice of claim, and all records and information submitted in support of such claim, shall be submitted with and accompanied by a notarized certificate under the California False Claims Act (Gov. Code, 12650 - 12655) containing the following language:

“Under penalty of law for perjury or falsification and with specific reference to the California False Claims Act (Gov. Code, 12650 *et seq.*) the undersigned hereby certifies that the claim for the additional compensation and time, if any, made herein for the work under the Agreement is a true statement of the actual costs incurred and time sought, and is fully documented and supported or capable of being fully documented and supported under the Agreement between the parties”.

"Dated:

"

"(Name)

"

_____ of
"(Title)

"

"(Company)"

Failure to submit the notarized certificate will be sufficient cause for denying the claim.

- 9.5. COUNTY written response to CONTRACTOR's claim, as further documented, shall be submitted to CONTRACTOR within thirty (30) days after receipt of further documentation, if any, or within a period of time not greater than that taken by CONTRACTOR in producing the additional information or requested documentation, whichever is greater. If CONTRACTOR disputes COUNTY written response, or COUNTY fails to respond within the time prescribed, CONTRACTOR may so notify COUNTY, in writing, either within fourteen (14) calendar days of receipt of COUNTY response or within fourteen (14) calendar days of COUNTY failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon demand, COUNTY shall meet and settle dispute within thirty (30) days from the date of receipt of the demand.

9.6. Following the meet and confer conference, if the claim or any portion remains in dispute, CONTRACTOR may file a claim as provided in Chapter 1 (commencing with section 900) and Chapter 2 (commencing with section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time CONTRACTOR submits its written claim pursuant to Paragraph 10.2 herein until the time that claim is denied as a result of the meet and confer process, including any period of time utilized by the meet and confer process.

10. SELECTION OF ON-SITE MANAGEMENT

The person serving as CONTRACTOR's site supervisor shall be approved by COUNTY. Approval shall not be unreasonably withheld by COUNTY. The site supervisor is hereby authorized to bind CONTRACTOR in all aspects of CONTRACTOR's performance of this Agreement. A site supervisor or another authorized individual shall be available at all times during periods of operation, either by phone or in person, to make decisions or provide coordination as necessary.

The above individuals shall be responsible for monitoring all aspects of the system operation and maintenance, including, but not limited to: ridership, quality of service, fare collection and reconciliation with ticket sales, reports and data collection for reports, customer data entry, maintenance and repair work, attitudes, motivations, and performance of all personnel and their duties..

11. EMPLOYEE QUALIFICATIONS/TRAINING/WORK RULES

11.1 CONTRACTOR shall comply with the employee qualification, training, and work rule requirements specified for all employees, whether full-time or part-time.

11.2 CONTRACTOR shall notify COUNTY in writing within thirty (30) calendar days of any changes in CONTRACTOR-provided personnel used for COUNTY operations.

11.3 CONTRACTOR shall provide adequate personnel as is necessary to provide the services. COUNTY is not obligated to reimburse or pay CONTRACTOR for any expense or cost incurred by CONTRACTOR for additional personnel, unless a substantial change in service occurs, as defined in Subparagraph 4.2.

12. BUSES, EQUIPMENT & RADIOS

12.1 CONTRACTOR shall provide COUNTY with the buses as per the Scope of Works. CONTRACTOR shall supply all other equipment necessary to operate the transit system as specified in this Agreement.



12.2 CONTRACTOR acknowledges that CONTRACTOR's use of radio frequency is contingent upon the proper conduct being exercised by CONTRACTOR's employees in transmitting and receiving. In the event that CONTRACTOR should lose the right to use said frequency as a result of misconduct by CONTRACTOR's employees, CONTRACTOR shall pay all such costs required to either re-establish the same frequency or to re-configure or replace radio equipment to assure that equivalent communications are provided.

12.3 CONTRACTOR, at its sole cost and expense, shall provide and install a voice and data base station(s) and an antenna.

13. OFFICE SPACE, SUPPLIES, EQUIPMENT, ETC

Unless otherwise provided, CONTRACTOR shall provide such office space, supplies (including all paper supplies, computer disks, and backup tapes), equipment, vehicles, reference materials, and telephone services as is necessary for CONTRACTOR to provide the services.

COUNTY is not obligated to reimburse or pay CONTRACTOR for any expense or cost incurred by CONTRACTOR in procuring or maintaining such items. Responsibility for the costs and expenses incurred by CONTRACTOR in providing and maintaining such items is the sole responsibility and obligation of CONTRACTOR.

14. TELEPHONE SERVICE

CONTRACTOR shall comply with provision of the telephone requirements. Upon termination or expiration of this Agreement, CONTRACTOR shall release all telephone numbers associated with COUNTY services for use by COUNTY or its future bus CONTRACTOR.

15. COUNTY PROPERTY

Any and all compositions, publications, field notes, plans, designs, specifications, blueprints, maps, formulas, processes, photographs, slides, video tapes, computer programs, computer disks, computer tapes, memory chips, soundtracks, audio recordings, films, audio-visual presentations, exhibits, reports, tests, studies, inventions, patents, trademarks, copyrights, or intellectual properties of any kind which are created, produced, assembled, compiled by, or are the result, product, or manifestation of, CONTRACTOR's services or work under this Agreement are and at the termination of this Agreement shall remain the sole and exclusive possession of COUNTY, when created, produced or published. CONTRACTOR will promptly convey possession and title to all such properties to COUNTY upon COUNTY's written request.

16. MAINTENANCE RECORDS AND INSPECTIONS



Records of all maintenance and inspections shall be kept and made available to COUNTY, the California Highway Patrol (CHP) and/or other regulating agencies with jurisdiction when requested. COUNTY maintains the right to inspect, examine and test, at any reasonable time, any equipment used in the performance of the work in order to ensure compliance with this Agreement. Such COUNTY inspection shall not relieve CONTRACTOR of the obligation to continually monitor the condition of such buses and to identify and correct all substandard or unsafe conditions immediately upon discovery.

CONTRACTOR shall transport all such vehicles at CONTRACTOR's expense, to COUNTY's designated inspection facilities when requested by COUNTY. In the event that CONTRACTOR is instructed by COUNTY, the CHP, or any other regulatory agency to remove any equipment from service due to mechanical and/or safety reasons, CONTRACTOR shall make any and all specified corrections and repairs to the equipment and resubmit the equipment for inspection and testing before it is placed in service.

17. REPORTS

17.1. Reports shall be submitted as per requirements of this Agreement. Reports shall be submitted with payment claims no later than the 10th of the month.

17.2. CONTRACTOR shall collect and compile summaries of data to complete reports regardless of data collecting capabilities of any computer-aided dispatch/scheduling system used for the provision of COUNTY services.

These reports shall include but not limited to the following: a monthly ridership and performance report; vehicle service hours and miles; compliments/complaints; vehicle and passenger accidents; and a general summary of other operational problems, evaluations, and solutions.

18. FARES

18.1. All fares shall be collected and reconciled as detailed.

18.2. COUNTY reserves the right to set fare rates for passengers. Such fares may be revised from time to time by COUNTY and set at such levels as may be determined to be in the best interest of COUNTY. Prior to restructuring such fare, COUNTY shall consider CONTRACTOR's recommendations regarding the appropriate fares.

18.3. In the event of revision of the fares, COUNTY shall provide CONTRACTOR with written instructions on fare changes at least thirty (30) days before such revised fares become effective, and CONTRACTOR shall collect such fares as are currently in effect and approved by the Board of Supervisors. CONTRACTOR shall not be required to make change to fares and shall work with COUNTY and post notices on all buses about changes to the fare structures.

18.4. COUNTY reserves the right to require an independent audit of CONTRACTOR's fare revenue handling processes and procedures.

19. FEDERAL, STATE AND LOCAL LAWS

19.1. CONTRACTOR warrants and covenants that it shall fully and completely comply with all applicable Federal, State and local laws and ordinances, and all lawful orders, rules and regulations issued by any authority with jurisdiction in all aspects of its performance of this Agreement. All contractual provisions required by the US Department of Transportation (DOT), as set forth in FTA Circular 4220.IE, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. CONTRACTOR shall not perform any act, fail to perform any act, or refuse to comply with any COUNTY request which would cause COUNTY to be in violation of the FTA terms and conditions.

19.2. CONTRACTOR shall comply with all applicable standards, orders, or requirements issued under the Clean Air Act (42 U.S.C. 1857 (h)). CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 *et seq.* CONTRACTOR agrees to report each violation to COUNTY and understands and agrees that COUNTY will, in turn, report each violation as required to assure notification to FTA and the appropriate Environmental Protection Agency (EPA) Regional Office.

19.3. CONTRACTOR also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

19.4. CONTRACTOR specifically agrees to obtain all zoning approvals required from COUNTY or other affected jurisdiction for CONTRACTOR's maintenance yard, office, and/or other facilities, and to perform all conditions specified on such zoning approvals, at the time specified.

19.5. DISADVANTAGED BUSINESS ENTERPRISE

19.5.1. This Agreement is subject to the requirements of Title 49, Code of Federal Regulations (CFR), Part 26, and participation by Disadvantaged Business Enterprise in the Department of Transportation (DOT) Financial Assistance Programs. CONTRACTOR adopts and incorporates the policy of DOT that Disadvantaged Business Enterprises (DBE) as defined in 49 CFR Part 26 shall have the maximum opportunity to participate in the performance of contracts financed in whole or part with Federal funds under this Agreement. The requirements of 49 CFR Part 26 applies to this Agreement.



19.5.2. CONTRACTOR shall not discriminate on the basis of race, color, national origin, age, or sex in the award and performance of this Agreement. CONTRACTOR shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by CONTRACTOR to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement. . Each subcontract CONTRACTOR signs with a subcontractor must include the assurance in this paragraph. (See 49 CFR 26.13(b)).

19.6 EQUAL EMPLOYMENT OPPORTUNITY/BASIC REQUIREMENTS.

19.6.1. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, CONTRACTOR agrees to comply with all applicable equal employment requirements of U.S. Department of Labor (U.S.DOL) regulations, "Office of Federal Contracts Compliance Programs Equal Employment Opportunity, Department of Labor", 41 C.F.R Parts 60 *et seq.*, (which implement Executive Order No. 11246, "Equal Employment Opportunity", as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity" 42 U.S.C. § 2000e note), and with any applicable Federal status, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project.

CONTRACTOR shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to race, color, creed, national origin, sex, or age. Such action shall include, but not limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection of training, including apprenticeship. In addition, CONTRACTOR agrees to comply with any implementing requirements FTA may issue and also agrees to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials.

19.6.2. In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, CONTRACTOR agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, CONTRACTOR agrees to comply with any implementing requirements FTA may issue.

19.6.3. In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, CONTRACTOR agrees that it will comply with the requirements of U.S Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act", 29 C.F.R. Part 1630, pertaining to

employment of persons with disabilities. In addition, CONTRACTOR agrees to comply with any implementing requirements FTA may issue.

19.6.4. CONTRACTOR also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA.

19.7 TITLE VI CIVIL RIGHTS ACT OF 1964.

During the term of this Agreement, CONTRACTOR, for itself, its assignees and successors in interest, agrees as follows:

19.7.1. Nondiscrimination: In accordance with Title VI of the Civil Rights Act, as amended, 2 U.S.C. § 2000d, Section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, Section 202 of the Americans with Disabilities Act of 1990, 2 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, CONTRACTOR agrees that it will not discriminate against any employee or applicant because of race, color, creed, national origin, sex, age, or disability. CONTRACTOR and its agents, officers, and employees shall comply with the provisions of the California Fair Employment and Housing Act (Government Code Section 12900, *et seq.*) and the applicable regulations promulgated there under in the California Code of Regulations. CONTRACTOR further agrees to abide by COUNTY's nondiscrimination policy and shall comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

19.7.2. Solicitations for Subcontracts, Including Procurement of Materials and Equipment: Each potential subcontractor or supplier shall be notified by CONTRACTOR of CONTRACTOR's obligations under this contract and the Regulations in all solicitations and negotiations made by CONTRACTOR for work to be performed under a subcontract, including procurement of materials or leases of equipment.

19.7.3 Information and Reports: CONTRACTOR shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, employees, other sources of information, and its facilities as may be determined by COUNTY or the FTA, as appropriate, and shall set forth what efforts it has made to obtain the information. CONTRACTOR must submit a properly executed Equal Employer Opportunity Report (EEO-1) upon request by COUNTY. CONTRACTOR shall notify COUNTY of any discrimination complaints.

19.7.4. Sanctions for Noncompliance: In the event of CONTRACTOR's noncompliance with the nondiscrimination provisions of this Agreement, COUNTY shall impose sanctions as it or the Federal Transit

Administration may determine to be appropriate, including, but not limited to:

19.7.4.1. Withholding payments to CONTRACTOR under this Agreement until CONTRACTOR complies; and

19.7.4.2. Cancellation, termination or suspension of this Agreement, in whole or in part.

19.7.5. Incorporation of Provisions: CONTRACTOR shall include the provisions of Subparagraphs 20.6 (a) through (e) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. CONTRACTOR shall take such action with respect to any subcontract or procurement as COUNTY or the Federal Transit Administration may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event CONTRACTOR becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, CONTRACTOR may request the services of the United States Attorney General in such litigation to protect the interests of the United States.

19.7.6. Orders or Judgments: CONTRACTOR shall, at its sole cost and expense, conform to any final orders issued by any State or Federal agency with jurisdiction to correct CONTRACTOR's discrimination in employment and/or ridership and shall fully save harmless and indemnify COUNTY in this regard.

19.8 ENERGY CONSERVATION REQUIREMENTS

CONTRACTOR shall recognize mandatory standards and policies relating to energy efficiency, which are contained in the California energy conservation plan issued pursuant to the Energy Policy and Conservation Act (42 U.S.C. section 6321, *et seq.*).

19.9 LABOR PROVISIONS

19.9.1. Overtime Requirements. No CONTRACTOR or subcontractor contracting for any part of the work under this Agreement which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any work week in which he or she is employed on such work to work in (i) excess of eight hours in any calendar day, (ii) in excess of forty hours in such work week or (iii) in excess of any other applicable overtime schedule authorized by law unless such laborer or mechanic receives compensation at rate not less than one and one-half times the basic rate of pay for all hours worked (i) in excess of eight hours in any calendar day, (ii) in excess of forty

hours in such work week or (iii) in excess of any other applicable overtime schedule authorized by law, whichever is greater.

19.9.2. Violation; Liability for Unpaid Wages; Liquidated Damages. In the event of any violation of the clause set forth in subparagraph (b) (1) of 29 CFR Section 5.5, CONTRACTOR and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such CONTRACTOR and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such district or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (b) (1) of 29 CFR Section 5.5 in the sum of \$10 for each calendar day on which such individual was required or permitted to work (i) in excess of eight hours or (ii) in excess of the standard of work week of forty hours without payment of the overtime wages required by the clause set forth in subparagraph (b) (1) of 29 CFR Section 5.5.

19.9.3. Withholding for Unpaid Wages and Liquidated Damages. DOT or COUNTY shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any monies payable on account of work performed by the CONTRACTOR or subcontractor under this Agreement or any other Federal contract with the same prime CONTRACTOR, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime CONTRACTOR, such sums as may be determined to be necessary to satisfy any liabilities of such CONTRACTOR or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (b) (2) of 29 CFR Section 5.5.

19.9.4. Payroll Records. CONTRACTOR or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of four years from the completion or termination of this Agreement for all laborers and mechanics, including guards and watchmen, working on this Agreement. Such records shall contain the name and address of each such employee; social security number; correct classifications; hourly rates of wages paid; daily and weekly number of hours worked; deductions made; and actual wages paid. The records to be maintained under this Subparagraph 20.8(d) shall be made available by CONTRACTOR or subcontractor for inspection, copying, or transcription by authorized representatives of DOT and the Department of Labor, and CONTRACTOR or

subcontractor will permit representatives to interview employees during working hours on the job.

19.9.5. CONTRACTOR or subcontractor shall insert in any subcontracts the clauses set forth in Subparagraphs 19.8 (a) through (e) and also a clause requiring subcontractors to include these clauses in any lower tier subcontracts. The prime CONTRACTOR shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in Subparagraphs 18.8 (a) through (e).

19.10 CONFLICT OF INTEREST

No employee, officer, or agent of COUNTY shall participate in the selection or in the award or administration of a contract if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when the employee, officer or agent, any member of his/her immediate family, an organization that employs, or is about to employ, has a financial or other interest in the firm selected for award.

19.11 LOBBYING REQUIREMENTS

CONTRACTORS agrees to comply with the Lobbying requirements which mandates the maximum flow down, pursuant to the Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352(B)(5) and 49 C.F.R. Part 19, Appendix A, Section 7.

Byrd Anti-Lobbying Amendment 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L.104-65 [to be codified at 2 U.S.C. § 1601 *et seq.*] CONTRACTORS who apply for a bid for an award of \$100,000 or more shall file the certification required by 49 CFR Part 20, "New Restrictions on Lobbying". Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person for organization or influencing or attempting to influence an officer or employee of any agency; a member of Congress; officer or employee of Congress; or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal Funds with respects to that Federal Contract, grant or award covered by 31 U. S. C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

CONTRACTOR certifies, to the best of his or her knowledge and belief, that:

19.11.1.No Federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or

attempting to influence an officer or employee of an agency; a Member of Congress; an officer or employee of Congress; or an employee of a Member of Congress in connection with the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

19.11.2.If any funds other than Federally appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)]

19.11.3.The undersigned shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements) and that all sub recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

19.12 DEBARRED BIDDERS REQUIREMENTS

CONTRACTOR, including any of its officers or holders of a controlling interest, is obligated to inform COUNTY whether or not it is or has been on any debarred bidders' list maintained by the United State Government.



Should CONTRACTOR be included on such a list during the performance of this project, it promptly shall so inform COUNTY.

19.13 FLY AMERICA REQUIREMENTS

CONTRACTOR agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's Regulations at 41 CFR Part 301-10, which provide that recipients and sub recipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act.

If a foreign air carrier was used CONTRACTOR shall submit, , an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. CONTRACTOR agrees to include the requirements of this section in all subcontracts that may involve international air transportation

19.14 BUY AMERICA REQUIREMENTS

CONTRACTOR agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provides that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 U. S. C. 5323(j) (2) (C) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.

A proposer must submit to the FTA recipient the appropriate Buy America certification with all proposals on FTA funded contacts, except those subject to a general waiver. Bids or proposal that is not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

19.15 CHARTER BUS REQUIREMENTS

CONTRACTOR agrees to comply with 49 U.S.C. 5323(d) and 49 CFR Part 604, which provides that recipients and sub recipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter



company willing and able to provide the service, except under one of the exceptions at 49 CFR 604.9. Any charter service provided under one of the exceptions must be "incidental", i.e., it must not interfere with or detract from the provision of mass transportation

19.16 SCHOOL BUS REQUIREMENTS

CONTRACTOR agrees to comply with 69 U.S.C. 323(f) and 49 CFR 605 which states that recipients and sub recipients of FTA assistance may not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and sub recipients may not use federally funded equipment, vehicles, or facilities.

19.17 CARGO PREFERENCE REQUIREMENTS

CONTRACTOR agrees to:

19.17.1. use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;

19.17.2. furnish a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the CONTRACTOR in the case of a subcontractor's bill-of-lading.) within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States,

19.17.3. include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

19.18 SEISMIC SAFETY REQUIREMENTS

CONTRACTOR agrees that any new building or addition to an existing building shall be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation



Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation.

CONTRACTOR also agrees to ensure that all work performed under this contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

19.19 CLEAN WATER REQUIREMENTS

CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 *et seq.* CONTRACTOR agrees to report each violation and understands and agrees to report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. CONTRACTOR also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

19.20 BUS TESTING REQUIREMENTS

CONTRACTOR agrees to comply with 49 U.S.C. A 5323(c) and FTA's implementing regulations at 49 CFR Part 665 and shall perform the following:

19.20.1. A manufacturer of a new bus model or bus produced with a major change in components or configuration shall provide a copy of the final test report at a point in the procurement process specified by the recipient which will be prior to the recipient's final acceptance of the first vehicle.

19.20.2. A manufacturer who releases a report under paragraph 1 above shall provide notice to the operator of the testing facility that the report is available to the public.

19.21 PRE-AWARD AND POST DELIVERY AUDIT REQUIREMENTS

CONTRACTOR agrees to comply with 49 U.S.C. § 5323 (I) and FTA's implementing regulation at 49 C.F.R. Part 663. See section on Buy America for additional information.

19.22 ACCESS TO RECORDS AND REPORTS REQUIREMENTS

Where the Purchaser is not a State but a local government and is the FTA Recipient or a sub-grantee of the FTA Recipient in accordance with 49 C.F.R. 18.36(i), CONTRACTOR agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and



records of the CONTRACTOR which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

Pursuant to 49 C.F.R. 633.17, CONTRACTOR also agrees to provide the FTA Administrator or his authorized representatives access to CONTRACTOR's records and construction sites pertaining to a major capital project as defined in 49 U.S.C. 5302(a) 1, which entails receiving Federal financial assistance through the programs described in 49 U.S.C. for Section 5307, Section 5309 or Section 5311 funding programs.

CONTRACTOR agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract. In such instances of litigation or settlement of claims, CONTRACTOR agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i) (11).

19.23 FEDERAL CHANGES REQUIREMENTS

CONTRACTOR shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. CONTRACTOR's failure to so comply shall constitute a material breach of this contract. Any changes made to this Agreement are bound by the Federal Transit Administration Procurement Guidelines.

19.24 CLEAN AIR REQUIREMENTS

CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 *et seq.* CONTRACTOR agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. CONTRACTOR also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

19.25 RECYCLED PRODUCTS REQUIREMENTS

CONTRACTOR agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory

provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

19.26 DAVIS-BACON AND COPELAND ANTI-KICKBACK ACT REQUIREMENTS

CONTRACTOR agrees to comply with the Davis-Bacon and Copeland Anti-Kickback Acts requirements including: (1) Minimum wages - (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4).

Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the CONTRACTOR and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) CONTRACTOR shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The

CONTRACTOR shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

(4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(B) If CONTRACTOR and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within thirty (30) days of receipt and so advise the contracting officer. Should the Administrator need additional time, he/she will notify the contracting officer within the 30-day period.

(C) In the event CONTRACTOR, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within thirty (30) days of receipt and so advise the contracting officer. Should the Administrator need additional time, he/she will so notify the contracting officer within the 30-day period.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If CONTRACTOR does not make payments to a trustee or other third person, CONTRACTOR may consider the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program as part of the wages of any laborer or mechanic; provided, however, that the Secretary of Labor has found, upon CONTRACTOR'S written request that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the CONTRACTOR to set aside in a separate account assets for the meeting of obligations under the plan or program.

(v)(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract to be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If CONTRACTOR and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within thirty (30) days of receipt and so advise the contracting officer. Should the Administrator need additional time, he/she will so notify the contracting officer within the 30-day period.

(C) In the event CONTRACTOR, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate

(including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with thirty (30) days of receipt and so advise the contracting officer. Should the Administrator need additional time, he/she will so notify the contracting officer within the 30-day period.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(2) Withholding: COUNTY shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the CONTRACTOR under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract.

In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, COUNTY may, after written notice to the CONTRACTOR, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records - (i) Payrolls and basic records relating thereto shall be maintained by the CONTRACTOR during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name; address; and social security number of each such worker; his or her correct classification; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act); daily and weekly number of hours worked; and deductions made and actual wages paid.

Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the CONTRACTOR shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. CONTRACTOR's employed apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) CONTRACTOR shall submit a copy of all payrolls to COUNTY for transmission to the Federal Transit Administration weekly for each week in which any contract work is performed (each a "payroll"). The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

(B) Each payroll submitted shall be accompanied by a Statement of Compliance, signed by the CONTRACTOR or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

- (1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;
- (2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed under the Agreement during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
- (3) That each laborer or mechanic has been paid no less than the applicable wage rates and fringe benefits or cash equivalents for

the classification of work performed, as specified in the applicable wage determination incorporated into the Agreement.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the CONTRACTOR or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) CONTRACTOR or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If CONTRACTOR or subcontractor fails to submit the required records or to make them available, the requesting Federal agency may, after written notice to CONTRACTOR, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees - (i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed:

(a) when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau; or

(b) if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the CONTRACTOR as to the entire work force under the registered program.

Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid no less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid no less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at a rate no less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification.

If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than the ratio permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at a rate no less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program.

If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination, unless the Administrator of the Wage and Hour Division determines that

there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate that is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid at a rate no less than the applicable wage rate on the wage determination for the classification of work actually performed.

In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal Employment Opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the Equal Employment Opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

(5) Compliance with Copeland Act requirements - CONTRACTOR shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this contract.

(6) Subcontracts - CONTRACTOR or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime CONTRACTOR shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination: debarment - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of this Agreement, and for debarment as CONTRACTOR and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29

CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between CONTRACTOR (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility - (i) By entering into this contract, CONTRACTOR certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this Agreement shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

It shall be a condition of this Agreement, and shall be made a condition of each subcontract entered into pursuant to this Agreement, that neither CONTRACTOR nor any subcontractor shall require any laborer or mechanic employed in connection with the performance of services under this Agreement to work under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under the California Occupational Safety and Health Act of 1973 (Labor Code, Section 6300 *et seq.*).

CONTRACTOR shall hold COUNTY harmless from any claims or charges by reason of CONTRACTOR's or any subcontractor's failure to comply with the above-referenced acts or any regulations adopted pursuant thereto and shall reimburse COUNTY for any fines, damages or expenses of any kind incurred by it by reason of said failure.

19.27

CONTRACT WORK HOURS AND SAFETY STANDARDS ACT REQUIREMENTS

CONTRACTOR agrees to comply with the Contract Work Hours and Safety Standards Act (the Act) as is codified at 40 USC 3701, *et seq.* The Act applies to grantee contracts and subcontracts "financed at least in part by loans or grants from the [Federal] Government." 40 USC 3701(b)(1)(B)(iii) and (b)(2), 29 CFR 5.2(h), 49 CFR 18.36(i)(6). Although the original Act required its application in any construction contract over \$2,000 or non-construction contract to which the Act applied over \$2,500 (and language to that effect is still found in 49 CFR 18.36(i)(6)), the Act no longer applies to any "contract in an amount that is not greater than \$100,000." 40 USC 3701(b)(3) (A)(iii).

This Act applies to construction contracts and, in very limited circumstances, non-construction projects where “laborers or mechanics on a public work” are employed. These non-construction applications do not generally apply to transit procurements because transit procurements (to include rail cars and buses) are deemed “commercial items” in 40 USC 3707, 41 USC 403 (12). A grantee that contemplates entering into a contract to procure a developmental or unique item should consult counsel to determine if the Act applies to that procurement and that additional language required by 29 CFR 5.5(c) must be added to the basic clause below:

- (1) Overtime requirements - No CONTRACTOR or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (2) Violation; liability for unpaid wages; liquidated damages - In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (2) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (3) of this section. Withholding for unpaid wages and liquidated damage.
- (3) COUNTY shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

- (4) Subcontracts – CONTRACTOR or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section as well as a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for ensuring any subcontractor or lower tier subcontractor complies with the clauses set forth in paragraphs (1) through (4) of this section.

19.28 NO GOVERNMENT OBLIGATION TO THIRD PARTIES
REGULATION

COUNTY and CONTRACTOR acknowledge and agree that, (1) the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to COUNTY, CONTRACTOR, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

CONTRACTOR agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

19.29 PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS
AND RELATED ACTS REQUIREMENTS

CONTRACTOR acknowledges that (1) the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 *et seq.* and U.S. DOT Regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, CONTRACTOR certifies or affirms the truthfulness and accuracy of any statement it has made or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, CONTRACTOR further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on CONTRACTOR to the extent the Federal Government deems appropriate.

(2) CONTRACTOR also acknowledges that if it makes or causes to be made a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Federal Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on CONTRACTOR, to the extent the Federal Government deems appropriate.



(3) CONTRACTOR agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

19.30 TERMINATION REGULATIONS:

CONTRACTOR agrees to comply with this regulation including (a) Termination for Convenience (General Provision), which provides that COUNTY may terminate this Agreement, in whole or in part, at any time by prior written notice to CONTRACTOR. CONTRACTOR shall be paid its costs, including contract close-out costs and profit, on work performed up to the time of termination. CONTRACTOR shall promptly submit its termination claim to COUNTY to be paid CONTRACTOR. If CONTRACTOR has any property in its possession belonging to COUNTY, CONTRACTOR will account for the same, and dispose as directed by COUNTY.

a. Termination for Default (General Provision): If CONTRACTOR does not deliver supplies in accordance with the contract delivery schedule, fails to perform in the manner called for in any service contract, or fails to comply with any other provisions of this Agreement; COUNTY may terminate this contract for default. COUNTY shall provide a termination notice in writing to CONTRACTOR setting forth the manner in which CONTRACTOR is in default. CONTRACTOR will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with guidelines set forth for performance in the contract.

b. Termination for Convenience (Professional or Transit Service Contracts): COUNTY may terminate this Agreement, in whole or in part, for convenience upon prior written notice to CONTRACTOR. Upon such termination, COUNTY shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

c. Termination for Default (Supplies and Service): If CONTRACTOR fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if CONTRACTOR fails to comply with any other provisions of this contract, COUNTY may terminate this contract for default. COUNTY shall terminate by delivering to CONTRACTOR a Notice of Termination in writing specifying the nature of the default. CONTRACTOR will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

d. Termination for Default (Transportation Services): If CONTRACTOR fails to pick up the commodities or to perform the services, including



delivery services, within the time specified in this contract or any extension or if CONTRACTOR fails to comply with any other provisions of this contract, COUNTY may terminate this contract for default. COUNTY shall terminate by delivering to CONTRACTOR a Notice of Termination in writing specifying the nature of default. CONTRACTOR will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

e. Opportunity to Cure (General Provision): COUNTY at its sole discretion may, in the case of a termination for breach or default, allow CONTRACTOR thirty (30) days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions.

If it is later determined by COUNTY that CONTRACTOR had an excusable reason for not performing or providing service, in the event of a strike, fire, or flood, or events otherwise beyond the control of CONTRACTOR, COUNTY, may allow CONTRACTOR to continue work, or treat the termination as a termination for convenience, after developing a new delivery performance schedule.

If CONTRACTOR fails to remedy to COUNTY's satisfaction within thirty (30) business days after receipt of written notice from COUNTY as described in paragraph (a) above, COUNTY shall have the right to terminate the Contract without any further obligation to CONTRACTOR. Any such termination for default shall not in any way preclude COUNTY from pursuing all available remedies against CONTRACTOR and its sureties for said breach or default.

f. Waiver of Remedies for any Breach: In the event that COUNTY elects to waive its remedies for any breach by CONTRACTOR of this Agreement, such waiver by COUNTY shall not limit COUNTY's remedies for any succeeding breach of that or of any other term, covenant, or condition of this contract.

If this contract is terminated while CONTRACTOR has possession of Recipient goods, CONTRACTOR shall, upon direction of COUNTY, protect and preserve the goods until surrendered to COUNTY or its agent. CONTRACTOR and COUNTY shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

If, after termination for failure to fulfill contract obligations, it is determined that CONTRACTOR was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of COUNTY.



19.31 GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NON-PROCUREMENT) REGULATIONS

This Agreement is a Covered Transaction for purposes of 49 CF Part 29. As such, CONTRACTOR is required to verify that the contractor, its principals as defined at 49 CFR 29.995, or affiliates as defined at 49 CFR 29.905, are not excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

CONTRACTOR is required to comply with 49 CFR 29, Subpart C and must include the notice of the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

Certification in this clause is a material representation of fact relied upon by COUNTY. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to COUNTY, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

19.32 PRIVACY ACT REQUIREMENTS

CONTRACTOR agrees to comply with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, CONTRACTOR agrees to obtain the consent of the Federal Government before CONTRACTOR or designated employees operate a system of records on behalf of the Federal Government. CONTRACTOR understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

CONTRACTOR also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

19.33 PATENT AND RIGHTS IN DATA REQUIREMENTS

CONTRACTOR agrees to comply with the FTA patent clause which is substantially similar to the text of 49 C.F.R. Part 19, Appendix A, Section 5, but the rights in data clause reflects FTA objectives. For patent rights, FTA is governed by Federal law and regulation. For data rights, the text on copyrights is insufficient to meet FTA's purposes for awarding research



grants. This model clause, with larger rights as a standard, is proposed with the understanding that this standard could be modified to FTA's needs.

19.34

EMPLOYEE PROTECTIVE AGREEMENT REQUIREMENTS

CONTRACTOR agrees to comply with applicable transit employee protective requirements as follows:

(a) General Transit Employee Protective Requirements - To the extent that FTA determines that transit operations are involved, CONTRACTOR agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying contract.

CONTRACTOR agrees to carry out work in compliance with the conditions stated in U.S. DOL letter. The requirements of this subsection (1), however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for non-urbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this clause.

(b) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body sub recipient for which work is performed on the underlying contract, CONTRACTOR agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. CONTRACTOR agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.

(c) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Non-urbanized Areas - If the contract involves transit



operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, CONTRACTOR agrees to comply with the terms and conditions of the Special Warranty for the Non-urbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

(2) CONTRACTOR also agrees to include any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

19.35 INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION
TERMS

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. CONTRACTOR shall not perform any act, fail to perform any act, or refuse to comply with any COUNTY requests which would cause COUNTY to be in violation of the FTA terms and conditions.

19.36 DRUG AND ALCOHOL TESTING REQUIREMENTS

CONTRACTOR agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 653 and 654, produce any documentation necessary to establish its compliance with Parts 653 and 654, and permit any authorized representative of the United States Department of Transportation or its operating administrations, CALTRANS, or COUNTY, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 653 and 654 and review the testing process. CONTRACTOR further agrees to certify annually its compliance with Parts 653 and 654 at a date specified by the Federal Transit Administration and to submit the Drug and Alcohol Reports, including the Management Information System reports before specified date to COUNTY'S Transit Manager, 1010 10th Street, Suite 4204, Modesto, CA 95354.

To certify compliance, CONTRACTOR shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register. CONTRACTOR agrees further to submit for review and approval before a copy of its Policy Statement developed to implement its drug and alcohol testing program. In addition, CONTRACTOR agrees to the selection of the



certified laboratory, substance abuse professional, or Medical Review Officer, or the use of a consortium).

20. INSURANCE

- 20.1 CONTRACTOR shall take out, and maintain during the life of this Agreement, insurance policies with coverage at least as broad as follows:
- 20.2 General Liability. Comprehensive general liability insurance covering bodily injury, personal injury, property damage, products and completed operations with limits of no less than Five Million Dollars (\$5,000,000) per incident or occurrence. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to any act or omission to act by CONTRACTOR under this Agreement or the general aggregate limit shall be shall be twice the required occurrence limit.
- 20.3 Business Liability Insurance: Owned/non-owned automobile liability insurance providing combined single limits covering bodily injury and property damage with limits of no less than Five Million Dollars (\$5,000,000) per incident or occurrence.
- 20.4 Automobile Liability Insurance: If CONTRACTOR or CONTRACTOR's officers, employees, agents, representatives or subcontractors utilize a motor vehicle in performing any of the work or services under this Agreement, owned/non-owned automobile liability insurance providing combined single limits covering bodily injury and property damage with limits of no less than Five Million Dollars (\$5,000,000) per incident or occurrence.
- 20.5 Workers' Compensation Insurance: Workers' Compensation insurance as required by the California Labor Code. In signing this contract, CONTRACTOR certifies under section 1861 of the Labor Code that the Contractor is aware of the provisions of section 3700 of the Labor Code which requires every employer to be insured against liability for workmen's compensation or to undertake self-insurance in accordance with the provisions of that code, and that CONTRACTOR will comply with such provisions before commencing the performance of the work of this Agreement.
- 20.6 Any deductibles, self-insured retentions or named insured's must be declared in writing and approved by COUNTY. At the option of COUNTY, either: (a) the insurer shall reduce or eliminate such deductibles, self-insured retentions or named insured's, or (b) CONTRACTOR shall provide a bond, cash or letter of credit guaranteeing payment of the self-insured retention or deductible and payment of any and all costs, losses, related investigations, claim administration and defense expenses.

- 20.7 CONTRACTOR shall provide a specific endorsement to all required insurance policies, except Workers' Compensation insurance, naming COUNTY and its officers, officials, employees and volunteers as additional named insured's regarding: (a) liability arising from or in connection with the performance or omission to perform any term or condition of this Agreement by or on behalf of CONTRACTOR, including the insured's general supervision of CONTRACTOR; (b) services, products and completed operations of CONTRACTOR; (c) premises owned, occupied or used by CONTRACTOR; and (d) automobiles owned, leased, hired or borrowed by CONTRACTOR. A Blanket (Broad) Additional Insured Form which makes all Certificate Holders additional insured's automatically shall suffice to satisfy this requirement, so long as the Additional Insured Form names COUNTY and its officers, officials, employees and volunteers.
- 20.8 CONTRACTOR's insurance coverage shall be primary insurance regarding COUNTY and County's officers, officials, employees and volunteers. Any insurance or self-insurance maintained by COUNTY or County's officers, officials, employees or volunteers shall be excess of CONTRACTOR's insurance and shall not contribute with CONTRACTOR's insurance.
- 20.9 CONTRACTOR's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- 20.10 Each insurance policy required by this section shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party or reduced in coverage or in limits except after thirty (30) days' prior written notice by First Class U.S. Mail, has been given to COUNTY.
- 20.11 Insurance is to be placed with California admitted insurers (licensed to do business in California) with a current rating by Best's Key Rating Guide of no less than A.
- 20.12 CONTRACTOR shall require that all of its subcontractors are subject to the insurance and indemnity requirements stated herein, or shall include all subcontractors as additional named insured's under its insurance policies.
- 20.13 At least ten (10) days prior to the date CONTRACTOR begins performance of its obligations under this Agreement, CONTRACTOR shall furnish COUNTY with certificates of insurance and with original endorsements effecting coverage required by this Agreement, including, without limitation, those effecting coverage for subcontractors of CONTRACTOR.

The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements shall be received and approved at COUNTY's sole and absolute discretion. COUNTY reserves the right to require complete copies of all required insurance policies and endorsements at any time.

- 20.14 The limits of insurance described herein shall not limit the liability of CONTRACTOR and CONTRACTOR's officers, employees, agents, representatives or subcontractors.

21. STATUS OF CONTRACTOR

- 21.1 All acts of CONTRACTOR, its agents, officers, employees, and all others action on behalf of CONTRACTOR relating to the performance of this Agreement, shall be performed as independent and not as agents, officers, or employees of COUNTY. CONTRACTOR, by virtue of this Agreement, has no authority to bind or incur any obligation on behalf of COUNTY.

CONTRACTOR has no authority or responsibility to exercise any rights or power vested in the COUNTY. No agent, officer, or employee of the COUNTY is to be considered an employee of CONTRACTOR. It is understood by both CONTRACTOR and COUNTY that this Agreement shall not under any circumstances be construed or considered to create an employer-employee relationship or a joint venture.

- 21.2 During the term of this Agreement, CONTRACTOR, its agents, officers, employees, representatives or subcontractors shall represent and conduct themselves as independent and not as, employees of COUNTY.

- 21.3 CONTRACTOR shall determine the method, details, and means of performing the work and services to be provided by CONTRACTOR under this Agreement. CONTRACTOR shall be responsible to COUNTY only for the requirements and results specified in this Agreement, and, except as expressly provided in this Agreement, shall not be subjected to County's control with respect to the physical action or activities of CONTRACTOR in fulfillment of this Agreement. CONTRACTOR has control over the manner and means of performing the services under this Agreement.

CONTRACTOR is permitted to provide services to others during the same period service is provided to COUNTY under this Agreement as long as the provision of services to others has no adverse consequences to COUNTY. If necessary, CONTRACTOR has the responsibility for employing other persons or firms to assist CONTRACTOR in fulfilling the terms and obligations under this Agreement.



- 21.4 If in the performance of this Agreement any third persons are employed by CONTRACTOR, such persons shall be entirely and exclusively under the direction, supervision, and control of CONTRACTOR. All terms of employment including hours, wages, working conditions, discipline, hiring, and discharging or any other term of employment or requirements of law shall be determined by the CONTRACTOR.
- 21.5 It is understood and agreed that as an independent and not an employee of COUNTY neither CONTRACTOR and CONTRACTOR's officers, employees, agents, representatives or subcontractors do not have any entitlement as a COUNTY employee, and do not have the right to act on behalf of COUNTY in any capacity whatsoever as an agent, or to bind COUNTY to any obligation whatsoever.
- 21.6 It is further understood and agreed that CONTRACTOR must issue W-2 forms or other forms as required by law for income and employment tax purposes for all of CONTRACTOR's assigned personnel under the terms and conditions of this Agreement.
- 21.7 As an independent, CONTRACTOR hereby indemnifies and holds COUNTY harmless from any and all claims that may be made against COUNTY based upon any contention by any third party that an employer-employee relationship exists by reason of this Agreement.

22. INDEMNIFICATION

- 22.1 Indemnification: To the fullest extent allowed by law, CONTRACTOR, its agents, officers and employees shall defend, indemnify, and hold harmless COUNTY, its officers, directors, officials, agents, employees, volunteers and representatives (collectively, "Indemnitee") from and against all claims, suits, damages, losses, expenses of every name, kind, and description, including litigation costs and reasonable attorney's fees incurred (collectively "losses") which are founded upon, arise out of, pertain to, relate to, directly or indirectly, in whole or in part, the alleged negligence, recklessness, or wilful misconduct resulting from the performance of this Agreement by CONTRACTOR, its officers, agents, employees, volunteers, representatives, contractors or subcontractors, excluding, however, such liabilities caused in part by the sole negligence, active negligence, or wilful misconduct of COUNTY, its agents, employees, and representatives.

These indemnification obligations shall not be limited by any assertion or finding that (1) the person or entity indemnified is liable by reason on non-delegable duty, or (2) the losses were caused in part by the negligence of, breach of contract by, or violation of law by Indemnitee. Nothing in this Agreement, including the provisions of this paragraph, shall constitute a waiver or limitation of any rights which Indemnitee may have under

applicable law, including without limitation, the right to implied indemnity.

- 22.2 Duty to Defend: The duty of CONTRACTOR to indemnify and save harmless as set forth herein, shall include both the duty to indemnify and at CONTRACTOR's own cost and expense the duty to defend as forth in Section 2778 of the California Civil Code and as limited in Section 2782.8 of the California Civil Code. This duty to defend arises immediately when such claim is made and shall be independent of any finding of negligence and shall arise regardless of any claim or assertion that Indemnitee caused or contributed to the Losses. CONTRACTOR shall provide legal counsel acceptable to COUNTY.
- 22.3 Duty to Cooperate: Each pat shall notify the other party within ten (10) days in writing of any claim or damage related to activities performed under this Agreement. The parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement.
- 22.4 The foregoing provisions shall survive the term and termination of this Agreement.

23. RECORD KEEPING

- 23.1 CONTRACTOR shall prepare and maintain all writings, documents, and records prepared or compiled in connection with the performance of this Agreement for a minimum of five (5) years from the termination or completion of this Agreement. This includes any handwriting, typewriting, printing, Photostatic, photographing, and every other means of recording upon any tangible thing, any form of communication or representation including letters, words, pictures, sounds, or symbols or any combination thereof.
- 23.2 Any authorized representative of COUNTY shall have access to any writings as defined above for the purposes of making audit, evaluation, examination, excerpts, and transcripts during the period such records are to be maintained by CONTRACTOR. Furthermore, COUNTY has the right to audit, inspect, or otherwise evaluate work performed or being performed under this Agreement.

24. REQUIRED LICENSES, CERTIFICATES, AND PERMITS

Any licenses, certificates, or permits required by the Federal, State, COUNTY, or municipal governments for CONTRACTOR to provide the services and work described in the Scope of Work must be procured by CONTRACTOR and be valid at the time CONTRACTOR enters into this Agreement. Further, during the term of this

Agreement, CONTRACTOR must maintain such licenses, certificates, and permits in full force and effect. Licenses, certificates, and permits may include but are not limited to driver's licenses, professional licenses or certificates, and business licenses. Such licenses, certificates, and permits will be procured and maintained in force by CONTRACTOR at no expense to COUNTY.

25. NO CONFLICTING USES

CONTRACTOR shall not operate, lease or charter buses provided to COUNTY and equipment used for this Agreement for any purpose other than this Agreement, unless specifically authorized by the COUNTY'S Transit Manager.

26. BONDS

26.1. Performance Bond:

CONTRACTOR shall perform no services pursuant to this Agreement, nor be entitled to compensation therefore, unless and until CONTRACTOR submits a bond or other acceptable security to COUNTY for use of COUNTY, such bond executed by CONTRACTOR and a surety company licensed to do business as such in the State of California, such bond in the amount of two hundred and fifty thousand dollars (\$250,000) and which shall at all times be kept in full force and effect. The condition of such bond shall be that CONTRACTOR shall fully and faithfully perform all conditions and covenants of this Agreement or that the face amount of such bond shall be forfeited to COUNTY.

The bond may be renewable one-year bond, and shall be renewed annually before its expiration date; provided, however, that such bond must remain in full force and effect from and after the date COUNTY makes any demands for payment on the bond until COUNTY releases such claim. Provision of such bond or its equivalent, approved by the COUNTY'S Transit Manager, is a material covenant of this Agreement. COUNTY'S Transit Manager shall not approve any security which is not unconditionally payable to COUNTY upon COUNTY's demand.

26.2 Fidelity Bond

This bond, with a \$50,000 minimum limit, shall insure all officials, agents and employees with access to funds received by CONTRACTOR.

27. ORDER OF PRECEDENCE

In the event of an inconsistency in this Agreement and any documents listed, the terms set forth in this Agreement shall prevail. If, and to the extent this Agreement incorporates by reference any provision of the RFP or the Response, such provision shall be deemed a part of this Agreement. Nevertheless, if there is any conflict among

the terms and conditions of the Agreement and those of any such provision or provisions so incorporated by reference, this Agreement shall govern over both the Response and RFP and the Response shall govern over the RFP.

28. ASSIGNMENT

This is an agreement for the services of CONTRACTOR. COUNTY has relied upon the skills, knowledge, experience, and training of CONTRACTOR, the CONTRACTOR's firm, associates, and employees of said CONTRACTOR as an inducement to enter into this Agreement. CONTRACTOR shall not assign or subcontract this Agreement without the express written consent of COUNTY. Further, CONTRACTOR shall not assign any monies due or to become due under this Agreement without the prior written consent of COUNTY.

29. WAIVER OF DEFAULT

Waiver of any default by either party to this Agreement shall not be deemed to be waiver of any subsequent default. Waiver or breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach, and shall not be construed to be a modification of the terms of this Agreement unless this Agreement is modified as shown in Paragraph 29.

30. SEVERABILITY

If any portion of this Agreement or application thereof to any person or circumstance shall be declared invalid by a court of competent jurisdiction or if it is found in contravention of any federal, state, or county statute, ordinance, or regulation the remaining provisions of this Agreement or the application thereof shall not be invalidated thereby and shall remain in full force and effect to the extent that the provisions of this Agreement are severable.

31. AMENDMENT

This Agreement may be modified, amended, changed, added to, or subtracted from by the mutual consent of the parties hereto if such amendment or change is in written form and executed with the same formalities as this Agreement and attached to the original Agreement to maintain continuity.

32. NOTICE

Any notice, communication, amendments, additions, or deletions to this Agreement including change of address of either party during the term of this Agreement which CONTRACTOR or COUNTY shall be required or may desire to make shall be in writing and may be personally served or sent by prepaid first class mail or by certified, return receipt requested, mail to the respective parties as follows:



To COUNTY: Stanislaus County Department of Public Works,
Transit Division
Attention: Transit Manager
1010 Tenth Street, Suite 4204
Modesto, CA 95354

To CONTRACTOR: Storer Transit Systems, Incorporated
Attention: Mr. Donald Storer
3519 McDonald Avenue
Modesto, CA 95358

33. ENTIRE AGREEMENT

This Agreement contains the entire agreement of the parties and no representations, inducements, promises, or agreements otherwise between the parties not embodied herein or incorporated herein by reference shall be of any force or effect. Further, no term or provision hereof may be changed, waived, discharged, or terminated unless the same is in writing executed by the parties hereto.

34. ADVICE OF ATTORNEY

Each party warrants and represents that in executing this Agreement, it has received independent legal advice from its attorneys or the opportunity to seek such advice.

35. CONSTRUCTION

Headings or captions to the provisions of this Agreement are solely for the convenience of the parties, are not part of this Agreement, and shall not be used to interpret or determine the validity of this Agreement. Any ambiguity in this Agreement shall not be construed against the drafter, but rather the terms and provisions hereof shall be given a reasonable interpretation as if both parties had in fact drafted this Agreement.

36. GOVERNING LAW AND VENUE

This Agreement shall be deemed to be made under, and shall be governed by and construed in accordance with, the laws of the State of California. Any action brought to enforce the terms or provisions of this Agreement shall have venue in the County of Stanislaus, State of California.

37. FORCE MAJEURE

37.1 CONTRACTOR shall not be charged, nor shall COUNTY demand from CONTRACTOR, damages because of failure in providing the services indicated



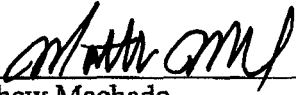
in this Agreement due to unforeseeable causes beyond the control and without the fault or negligence of CONTRACTOR. Such causes of excusable delay may include fires, floods, epidemic, quarantine, public road closures, but in every case the delay is excusable only for so long as, and to the extent, that the excusable delay continues, provided, however, that disruption caused by or related to labor strikes, picketing, boycotting, or any other labor strife of any form or manner which directly or indirectly is aimed, directed or focused at CONTRACTOR shall not be an excusable delay under any circumstance.

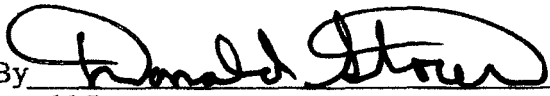
- 37.2. CONTRACTOR shall be entitled to no compensation for any service, the performance of which is excused pursuant to this Section or Section 36.1
- 37.3. In the event that CONTRACTOR is unable to provide the services indicated due to any cause, he shall make reasonable attempt to so notify the public including notification to local radio stations, and if appropriate, local newspapers and television stations.
- 37.4. Whenever CONTRACTOR has knowledge that any actual or potential force majeure may delay or prevent performance of this Agreement, CONTRACTOR on a timely basis, shall notify COUNTY of the fact, and thereafter shall report to COUNTY all relevant information then known to CONTRACTOR, and shall continue to so report. The report shall detail the cause of the force majeure, the impact on scheduled service, and the action taken by CONTRACTOR in response to the force majeure. The report will be provided in a time line format.

IN WITNESS WHEREOF, the parties have executed this Agreement in duplicate on the day and year first herein above written.

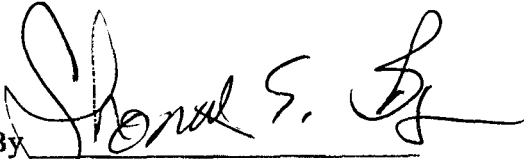
COUNTY OF STANISLAUS

**STORER TRANSIT SYSTEMS,
INCORPORATED**

By 
Matthew Machado
Director, Department of Public Works
COUNTY

By 
Donald Storer
President, CEO
CONTRACTOR

APPROVED AS TO FORM:
John P. Doering
County Counsel

By 
Thomas E. Boze
Deputy County Counsel